

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated June 27, 2008. Reconsideration and allowance of the application in view of the remarks to follow are respectfully requested.

Claims 1-5 are pending in the Application. By means of the present amendment, claims 1-5 are amended including for better conformance to U.S. practice, such as deleting reference numerals typically used in European practice that are known to not limit the scope of the claims. Further amendments include amending dependent claims to begin with "The" as opposed to "A". Claims 1 and 3 are further amended to clarify what was in fact already recited in the claims. Specifically, the claims previously recited "the container further comprising a transparent end portion ..." Accordingly, it is respectfully submitted that the "end portion" is an "end portion of the container" as now recited. No new matter is added nor should any further search be necessitated by these amendments. Accordingly, entrance and consideration of the claims as amended is respectfully requested. By these amendments, claims 1-5 are not amended to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

Applicants furthermore reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

Applicants thank the Examiner for acknowledging the claim for priority and receipt of certified copies of all the priority document(s).

In the Final Office Action, claims 1 and 3-5 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by, it is believed, U.S. Patent No. 6,806,988 to Onuki ("Onuki"). Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Onuki. It is not clear if Onuki is intended cited or U.S. Patent No. 6,702,483 to Tsuboi ("Tsuboi") since the rejection cites a patent number that corresponds to Onuki, yet states that the reference is by Tsuboi. The Notice of References Cited, cites Tsuboi.

Accordingly, it is difficult to ascertain what features or references for that matter are being applied in rejecting the claims. Further confusion is added in that the Final Office Action cites fig. 45C of Tsuboi (see, Final Office Action, page 3, lines 3-5) as showing a portion of what is recited in the claims, namely "a part of the transparent end portion of the container being in

direct contact with and defining the shape of a central portion of the interface" as recited in claims 1 and 3, yet only Onuki contains a FIG. 45C, so again it is difficult to ascertain what reference is being recited in rejecting the claims.

In the interest of expediting consideration and allowance of the claims, each of Onuki and Tsuboi were thoroughly examined and are considered herein. It is respectfully submitted that claims 1-5 are allowable over both of Onuki and Tsuboi for at least the following reasons.

Onuki shows an optical apparatus formed by a first liquid 121/221 and a second liquid 122/222 which do not mix and form an interface 124/224 there between (see, FIGs. 45A-45C and Col. 6, lines 29-30). The liquids are enclosed in a container 105/205 having a cover 106/206. FIG. 45C shows a condition wherein (emphasis added) "the top of the interface 224 will brought into contact with the hydrophilic film 213 formed on the lower surface of the cover plate 206 to become flat." Accordingly, as made clear by Onuki, the interface 224 is never brought into direct contact with the cover plate 206 of the container 205.

Similarly Tsuboi shows in a FIG. 3C wherein "the crest of the boundary 124 contacts to the hydrophilic film 113 formed on the

lower surface of the cover plate 106 and becomes flat." (See, Col. 6, lines 33-39.) Accordingly, as made clear by Tsuboi, the interface 124 is never brought into direct contact with the cover plate 106 of the container 105.

It is respectfully submitted that the variable focus lens of claim 1 is not anticipated or made obvious by the teachings of Onuki or Tsuboi. For example, Onuki and Tsuboi does not disclose or suggest, a variable focus lens that amongst other patentable elements, comprises (illustrative emphasis added) "the container further comprising a transparent end portion in the light path, a part of the transparent end portion of the container being in direct contact with and defining the shape of a central portion of the interface at a predefined voltage" as recited in claim 1, and as similarly recited in claim 3. In each of Onuki and Tsuboi, the interface between the liquids is bounded by a hydrophilic film and therefore never makes direct contact with the cover plate of the container.

Based on the foregoing, the Applicants respectfully submit that independent claims 1 and 3 are patentable over Onuki and Tsuboi and notice to this effect is earnestly solicited. Claims 2 and 4-5 respectively depend from one of claims 1 and 3 and

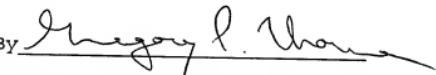
accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Patent
Serial No. 10/599,866
Amendment in Reply to Final Office Action of June 27, 2008

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
August 27, 2008

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101